

Supplemental unemployment benefit trust; termination. A provision in a new collective bargaining agreement that calls for the termination of a supplemental unemployment benefit plan and the distribution of residuary assets to employees covered by the plan will not affect the exempt status of a trust created to administer the plan, if the plan has been in effect long enough to satisfy the requirements of section 1.501(c)(17)-2(d) of the regulations and satisfaction of all liabilities to employees is guaranteed.

#### ISSUE

Under the circumstances described below, will the termination of a trust exempt from federal income tax under section 501(c)(17) of the Internal Revenue Code result in disqualification of its exempt status?

#### FACTS

The trust was created to administer a supplemental unemployment benefit plan in accordance with the terms of a collective bargaining agreement entered into between a corporation and a union. It has been in existence for a sufficient period of time to satisfy the permanency requirement of section 1.501(c)(17)-2(d) of the Income Tax Regulations. The trust is funded by contributions by the corporation. The current collective bargaining agreement includes a plan to terminate the supplemental unemployment benefit plan, and to distribute the remaining assets of the trust, after the satisfaction of all liabilities of the trust, to the employees covered by the plan.

#### LAW AND ANALYSIS

Section 501(c)(17) of the Code provides for the exemption from federal income tax of a trust or trusts forming part of a plan providing for the payment of supplemental unemployment compensation benefits.

Section 1.501(c)(17)-1(a)(4) of the regulations provides, in part, that the trust must be a part of a plan which provides that the corpus and income of the trust cannot (before the satisfaction of all liabilities to employees covered by the plan) be used for, or diverted to, any purpose other than the providing of supplemental unemployment compensation benefits.

Section 1.501(c)(17)-2(d) of the regulations provides generally that a plan providing for the payment of supplemental unemployment compensation benefits contemplates a permanent as distinguished from a temporary program. Thus, the abandonment of the plan for any reason other than a business necessity within a few years after it has taken effect will be evidence that the plan from its inception was not a bona fide program. Whether or not a

particular plan constitutes a permanent arrangement will be determined by all of the surrounding facts and circumstances. However, it is immaterial that a collective bargaining agreement provides that a plan may be modified, or that the plan provides that the assets remaining in the trust (after the satisfaction of all liabilities under the plan) may be returned to the employer. These provisions do not imply that the plan is not a permanent arrangement nor preclude the trust from qualifying under section 501(c)(17) of the Code.

In this case, while the assets distributed upon termination of the plan will not be used solely for the purpose of providing supplemental unemployment benefits, such a distribution does not violate section 1.501(c)(17)-1(a)(4) of the regulations since all liabilities, including those to employees covered by the plan, will be satisfied prior to the distribution.

#### HOLDING

The termination of the trust and the distribution of the remaining assets of the trust to the employees covered by the plan, after the satisfaction of all liabilities of the trust, will not result in disqualification of its exempt status under section 501(c)(17) of the Code.